

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1673 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UMEDSINGH SHYAMSINGH

Versus

CHAMPADEVI D/O ACGAKIHEE

Appearance:

MR RN SHAH for Petitioner

MR VJ DESAI for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/07/2000

ORAL JUDGEMENT

(Per: M.H. Kadri, J.)

The appellant, original plaintiff in this First
Appeal has challenged the judgment and decree dated

August 18, 1980 passed by the learned Judge Court No.5, City Civil Court, Ahmedabad passed in Civil Suit No.2459 of 1979.

2. Shyam Singh had two wives, one Mohiniben (legally wedded wife) and another Champadevi (concubine or a mistress). The appellant Umedsingh is the son of Mohiniben. Shyam Singh died on August 24, 1976. Mohiniben and the appellant filed suit for administration of the properties as described in Schedule annexed to the plaint and also for accounts and the income of those properties to be recovered from the respondents. The appellant and Mohiniben also prayed for determination of their share in the properties, as detailed in the Schedule to the plaint. In the alternative, the appellant and Mohiniben prayed for division of partition of the suit properties among the parties to the suit. The averments made in the plaint show that the respondent no.2 to 4 were not the legitimate children of deceased Shyamsingh because they were born out of wedlock of deceased Shyamsingh and Champadevi. It was averred that the respondents were mismanaging the suit properties left by the deceased Shyamsingh. It was further averred that the respondents had no title, right or interest in the suit properties and therefore they were liable to give accounts to the appellant and Mohiniben. The record indicates that during the pendency of the suit, original plaintiff Mohiniben had expired and her name was deleted as plaintiff no.1.

3. The respondents resisted the suit by filing their written statement at Exh.17 inter alia contending that deceased Shyamsingh was not the licensee of the property in which business in the name and style of Darbar Lodging and Boarding Housing was carried on. It was averred that Shyamsingh was not in the possession or occupation of those premises at the time of his death. According to the respondents, after the death of Shyamsingh a fresh lease was executed whereby the respondent no.2 Kishorsingh had become the lessee of the property wherein an independent business in the name of Ramnivas Boarding and Guest House was carried on. It was further averred that all the other respondents were carrying on business on their own wherein deceased Shyamsingh had no interest. With regard to the double barrel gun of the deceased Shyamsingh, it was contended by the respondents that after the death of Shyamsingh, the gun belonging to the deceased Shyamsingh had become the property of respondent no.2 Kishorsingh as the same was gifted to him during the life time of the deceased. With regard to the property known as Thakor Nivas situated at Dharmanagar

Co-operative Housing Society at Sabarmati, it was contended that the said property was purchased from the savings of the respondent no.1 Champadevi and Ram Singh who was the husband of respondent no.5 Janiben. With regard to the flat in Everbella Co-operative Housing Society, it was contended that the same was acquired in the name of respondents no.1, 2 and 3 and the deceased husband of respondent no.5 out of the payments made by Shyamsingh to these defendants towards their maintenance. With regard to the property described in the Schedule which related to the house situated at Dandigar's Pole, the respondents stated that respondent no.2 is the tenant of the said premises and deceased Shyamsingh had not acquired the tenancy rights in the said property. It was further averred by the respondents that they had never laid any claim of heirship on the estate of Shyamsingh but the said properties were of their exclusive ownership because those properties were purchased or acquired out of the moneys paid to them by deceased Shyamsingh towards their maintenance. On the aforesaid averments, the respondents pleaded that the suit filed by the appellant and the deceased Mohiniben be dismissed with costs.

4. On the aforesaid pleading of the parties, the learned Trial Judge framed issues at Exh.12. The appellant, in support of his case, examined himself at Exh.48. On behalf of the respondents, respondent no.1 Champadevi Achalaji was examined at Exh.58. Respondent No.2 Kishorsingh Shyamsingh was examined at Exh.59. One Alimiya Chhotumiya Shaikh who was the owner of property bearing Municipal Census No.624 was examined at Exh.62. Owner of property bearing Municipal Census No.612 Abde Ali Mohmed Ali was examined at Exh.67. The parties to the suit also produced oral and documentary evidence in support of their case.

5. Learned Trial Judge on overall appreciation of the oral and documentary evidence deduced that the properties of which partition and accounts were prayed for in the suit already stood partitioned before the death of Shyamsingh. The learned Trial Judge also deduced that the property of which partition was sought for by the appellants were purchased out of the amount of maintenance given by deceased Shyamsingh to the respondents and the appellant had no right or title in those properties as they were not the properties of deceased Shyamsingh. Learned Trial Judge also deduced that deceased Shyamsingh had quite sumptuous income from his business and it was quite probable that he was giving amount of maintenance to the respondent no.1 and her children. With regard to the double barrel gun, the

learned Trial Judge deduced that during the life time of Shyamsingh, the said gun was gifted to the respondent no.2 and he had become the owner of the said gun and therefore the appellant had no right to claim the double barrel gun on the ground that the said gun belonged to deceased Shyamsingh. The learned Trial Judge deduced that deceased Shyamsingh had no tenancy right in the property bearing Survey Nos.623/1, 623/2, 623/3, 623/4 and 611 wherein the respondent no.2 was running his independent business in the name of Ramnivas Boarding and Guest House. On the above referred to conclusions, learned Trial Judge dismissed the suit filed by the appellant which has given rise to filing of this appeal.

6. Learned counsel for the appellant Mr. R.N. Shah has taken me through the entire record and the proceedings of the trial court and submitted that the properties as shown in the Schedule annexed to the plaint belonged to the deceased Shyamsingh wherein the appellant and the deceased Mohiniben had right and therefore the learned Trial Judge had committed error in dismissing the suit filed for partition, accounts and possession of the suit properties. The counsel for the appellant further submitted that the appellant had led sufficient evidence to prove that the properties, as described in the plaint, were the sole ownership of the deceased Shyamsingh and the appellant being his legitimate son had title over the said properties and therefore the learned Trial Judge ought to have decreed the suit.

7. None of the contentions raised by the learned counsel for the appellant deserve any merit. The reason and conclusions of the Trial Court are based on proper appreciation of oral as well as documentary evidence and does not call for any interference of this court in this Appeal. The properties in which the appellant was claiming interest were acquired by the respondents through the amount of maintenance given by the deceased Shyamsingh and the appellant cannot claim any right on the said properties. The deceased Shyamsingh had no tenancy rights over the premises bearing Survey Nos.623/1, 623/2, 623/3, 623/4 and 611 but on the contrary, the respondent no.2 had acquired tenancy rights over the said property wherein he was carrying on his own business in the name of Ramnivas Boarding and Guest House. The double barrel gun on which a claim was laid by the appellant was gifted to the respondent no.2 during the life time of deceased Shyamsingh and therefore the claim of ownership by the appellant was rightly rejected by the Trial Court. The conclusions and findings arrived at by the Trial Court are quite just and proper and are

based on proper appreciation of oral as well as documentary evidence and no ground is made out by the appellant to interfere with them in this appeal. In view of the above discussions, this appeal being meritless is hereby dismissed. However, there shall be no order as to costs.

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